IN THE CIRCUIT COURT OF ROANOKE CITY FOR THE COMMONWEALTH OF VIRGINIA

MINDY SUE PERDUE PO Box 323 Wirtz, VA 24184 Plaintiff, v. **FAMOUS ANTHONY'S, INC.** PO Box 21707 Roanoke, Virginia 24018 Serve: Douglas S. Wilson Registered Agent 4725 Garst Mill Road Suite 3 Roanoke, Virginia 24018 Defendant.	**CASE NO.:** _____ **JURY TRIAL DEMANDED**

COMPLAINT FOR DAMAGES

Plaintiff, Mindy Perdue ("Plaintiff"), by and through undersigned counsel, hereby files this Complaint against the defendant, Famous Anthony's, Inc. ("Defendant"), and states as follows:

NATURE OF ACTION

1. This is an action against Defendant for the wrongful manufacture, distribution, and sale of food products that were contaminated by Hepatitis A. Plaintiff consumed the defective food products, which caused her to suffer the significant injuries described below.

PARTIES

2. Plaintiff Mindy Perdue is a resident and citizen of Franklin County, Virginia.

3. Defendant Famous Anthony's, Inc. ("Defendant") is a Virginia corporation, and its corporate headquarters and principal place of business is in Roanoke, Virginia. It is therefore a citizen of the Commonwealth of Virginia.

4. At all times relevant to this action, Defendant was engaged in the distribution and sale of a variety of food products, including the gravy biscuit product that caused Plaintiff's injuries described below, to customers across the Commonwealth of Virginia.

5. At all times relevant to this action, Defendant owned, operated, and managed a restaurant located at 4913 Grandin Road in Roanoke, Virginia 24018 (the "Restaurant"), where defective food products were sold to Plaintiff, who purchased and consumed them.

JURISDICTION AND VENUE

6. Defendant manufacturers and sells food products, including those products at issue in this case, for use and consumption by consumers in Virginia.

7. Defendant transacted business in Virginia and purposely availed itself of the rights and protections of Virginia law. Accordingly, Defendant is subject to the personal jurisdiction of this Court.

8. This Court has original jurisdiction because the matter in controversy exceeds $50,000.00, exclusive of costs.

9. Venue is proper in this Court as the facts giving rise to Plaintiff's Complaint arose in the City of Roanoke and Defendants' acts and omissions occurred here.

10. Furthermore, Defendant (1) transacts business in Virginia; (2) contracts to supply things, including the foods product at issue, in Virginia; (3) caused tortious injury to Plaintiff by an act or omission in Virginia; (4) caused tortious injury in Virginia by an act or omission outside of Virginia and regularly do or solicit business and derive substantial revenue from goods used or

consumed in Virginia; and (5) caused injury in this Commonwealth by breach of warranty expressly or impliedly made in the sale of goods inside Virginia under circumstances in which they might reasonably have expected the Plaintiff to consume or be affected by the goods in Virginia, and (6) regularly do or solicit business and engage in other persistent conduct and/or derive substantial revenue from goods used or consumed in Virginia.

FACTS

11. **Hepatitis A.** Exposure to hepatitis A virus or ("HAV") can cause an acute infection of the liver that is typically mild and resolves on its own. The symptoms and duration of illness vary a great deal, with many persons showing no symptoms at all. Fever and jaundice are two of the symptoms most associated with HAV infection.

12. Throughout history, hepatitis infections have plagued humans. The "earliest accounts of contagious jaundice are found in ancient China."

13. According to the CDC: The first descriptions of hepatitis (epidemic jaundice) are generally attributed to Hippocrates. Outbreaks of jaundice, probably hepatitis A, were reported in the 17th and 18th centuries, particularly in association with military campaigns. Hepatitis A was first differentiated epidemiologically from hepatitis B, which has a long incubation period, in the 1940s. Development of serologic tests allowed definitive diagnosis of hepatitis B. In the 1970s, identification of the virus, and development of serologic tests helped differentiate hepatitis A from other types of non-B hepatitis.

14. Until 2004, HAV was the most frequently reported type of hepatitis in the United States. In the pre-vaccine era, the primary methods used for preventing HAV infections were hygienic measures and passive protection with immune globulin (IG). Hepatitis A vaccines were licensed in 1995 and 1999. These vaccines provide long-term protection against HAV infection.

15. Hepatitis A is the only common vaccine-preventable foodborne disease in the United States. This virus is one of five human hepatitis viruses that primarily infect the human liver and cause human illness. Unlike hepatitis B and C, hepatitis A does not develop into chronic hepatitis or cirrhosis, which are both potentially fatal conditions. Nonetheless, infection with the hepatitis A virus (HAV) can lead to acute liver failure and death.

16. Hepatitis A is a communicable (or contagious) disease that often spreads from person to person. Person-to-person transmission occurs via the "fecal-oral route," while all other exposure is generally attributable to contaminated food or water. Food-related outbreaks are usually associated with contamination of food during preparation by a HAV-infected food handler. The food handler is generally not ill because the peak time of infectivity—that is, when the most virus is present in the stool of an infected individual—occurs two weeks before illness begins.

17. HAV is relatively stable and can survive for several hours on fingertips and hands and up to two months on dry surfaces. The virus can be inactivated by heating to 185°F (85°C) or higher for one minute or disinfecting surfaces with a 1:100 dilution of household bleach in tap water.[1] HAV can still be spread from cooked food if it is contaminated after cooking.

18. Hepatitis A may cause no symptoms at all when it is contracted, especially in children.[2] Asymptomatic individuals will only know they were infected (and have become immune, given that you can only get hepatitis A once) by getting a blood test later in life. Approximately 10

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[1] CDC, "Updated recommendations from Advisory Committee on Immunization Practices (ACIP) for use of hepatitis A vaccine in close contacts of newly arriving international adoptees," Morbidity and Mortality Weekly Report, Vol. 58, No. 36, (Sept. 18, 2006), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5836a4.htm; Fiore, Anthony, *et al.*, Advisory Committee on Immunization Practices (ACIP), Prevention of Hepatitis-A Through Active or Passive Immunization: Recommendations, Morbidity & Mortality Weekly Review, Vol. 55, Report 407, (May 29, 2006) at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5507a1.htm; Todd, Ewan C.D., *et al.*, "Outbreaks Where Food Workers Have Been Implicated in the Spread of Foodborne Disease. Part 6. Transmission and Survival of Pathogens in the Food Processing and Preparation-environment," Journal of Food Protection, Vol. 72, 202-19 (2009). Full text of the article is available online at http://courses.washington.edu/eh451/articles/Todd_2009_food%20processing.pdf.

[2] Fiore, Anthony, Division of Viral Hepatitis, CDC, "Hepatitis A Transmitted by Food," *supra* note 7

to 12 days after exposure, HAV is present in blood and is excreted via the biliary system into the feces. Although the virus is present in the blood, its concentration is much higher in feces. HAV excretion begins to decline at the onset of clinical illness and decreases significantly by 7 to 10 days after onset of symptoms. Most infected persons no longer excrete virus in the feces by the third week of illness. Children may excrete HAV longer than adults.

19. Symptoms typically begin about 28 days after contracting HAV but can begin as early as 15 days or as late as 50 days after exposure. The symptoms include muscle aches, headache, anorexia (loss of appetite), abdominal discomfort, fever, and malaise.

20. After a few days of typical symptoms, jaundice (also termed "icterus") sets in. Jaundice is a yellowing of the skin, eyes, and mucous membranes that occurs because bile flows poorly through the liver and backs up into the blood. The urine will also turn dark with bile and the stool light or clay-colored from lack of bile. When jaundice sets in, initial symptoms such as fever and headache begin to subside.

21. In general, symptoms usually last less than two months, although 10% to 15% of symptomatic persons have prolonged or relapsing disease for up to 6 months. It is not unusual, however, for blood tests to remain abnormal for six months or more. The jaundice so commonly associated with HAV can also linger for a prolonged period in some infected persons, sometimes eight months or more. Additionally, pruritus, or severe "itchiness" of the skin, can persist for several months after the onset of symptoms. These conditions are frequently accompanied by diarrhea, anorexia, and fatigue.

22. Relapse is possible with hepatitis A, typically within three months of the initial onset of symptoms. Although relapse is more common in children, it does occur with some regularity in

adults. Most persons who are infected with hepatitis A fully recover, and do not develop chronic hepatitis. Persons do not carry HAV long-term as with hepatitis B and C.

23. Fulminant hepatitis A, or acute liver failure, is a rare but devastating complication of HAV infection. As many as 50% of individuals with acute liver failure may die or require emergency liver transplantation. Elderly patients and patients with chronic liver disease are at higher risk for fulminant hepatitis A. In parallel with a declining incidence of acute HAV infection in the general population, however, the incidence of fulminant HAV appears to be decreasing.

24. HAV infects the liver's parenchymal cells (internal liver cells). Once a cell has been penetrated by the viral particles, the hepatitis A releases its own toxins that cause, in essence, a hostile takeover of the host's cellular system. The cell then produces new viral components that are released into the bile capillaries or tubes that run between the liver's parenchymal cells. This process results in the death of liver cells, called hepatic necrosis.

25. The fulminant form of hepatitis occurs when this necrotic process kills so many liver cells—upwards of three-quarters of the liver's total cell count—that the liver can no longer perform its job. Aside from the loss of liver function, fulminant hepatic failure can lead to encephalopathy and cerebral edema. Encephalopathy is a brain disorder that causes central nervous system depression and abnormal neuromuscular function. Cerebral edema is a swelling of the brain that can result in dangerous intracranial pressure. Intracranial hypertensions leading to a brain stem death and sepsis with multiple organ failure are the leading causes of death in individuals with fulminant hepatic failure.

26. Hepatitis A is much more common in countries with underdeveloped sanitation systems and, thus, is a risk in most of the world. An increased transmission rate is seen in all countries other than the United States, Canada, Japan, Australia, New Zealand, and the countries of Western

Europe. Nevertheless, infections continue to occur in the United States, where approximately one-third of the population has been previously infected with HAV.

27. Each year, approximately 30,000 to 50,000 cases of hepatitis A occur in the United States. Historically, acute hepatitis A rates have varied cyclically, with nationwide increases every 10 to 15 years. The national rate of HAV infections has declined steadily since the last peak in 1995. Although the national incidence—1.0 case per 100,000 population—of hepatitis A was the lowest ever recorded in 2007, it is estimated that asymptomatic infections and underreporting kept the documented incidence-rate lower than it actually is. In fact, it is estimated that there were 25,000 new infections in 2007.

28. **The HAV Outbreak**: The Virginia Department of Health and the Roanoke City and Alleghany Health Districts (RCAHD) have identified a cluster of hepatitis A cases linked to an employee who worked at three Famous Anthony's restaurant locations in Virginia. Patrons who visited the famous Anthony's locations at 4913 Grandin Road, 6499 Williamson Road, or 2221 Crystal Spring Avenue between August 10 and August 26 of 2021 may have been exposed. As of September 28, 2021, there were fourteen confirmed infections related to this outbreak, resulting in at least three hospitalizations.

29. **Mindy Perdue's HAV Infection**: Plaintiff ate at the 4913 Grandin Road Famous Anthony's restaurant on August 21, 2021. She purchased and consumed a gravy biscuit combo. Ms. Perdue began to feel ill on September 17, 2021, which is consistent with a typical symptom onset of approximately 28 days. She suffered from migraines, a severely elevated temperature, vomiting, jaundice, and dark urine. Ultimately Ms. Perdue was hospitalized after developing jaundice. All her injuries were due to consuming the food products sold to her by Defendant.

30. As a direct and proximate result of consuming Defendants' tainted food products,

Plaintiff contracted Hepatitis A; has suffered, and will continue to suffer, extreme physical and emotional damages; has incurred, and will continue to incur, significant medical expenses, and has suffered wage loss.

COUNT ONE
(NEGLIGENCE)

31. The allegations in Paragraphs 1 through 30 above are incorporated by reference as if fully set forth herein.

32. At the time and place, Plaintiff purchased and was supplied with food products for immediate consumption. One or more of the food products, which manufactured, supplied, and sold by Defendant, was contaminated with Hepatitis A.

33. Defendant, directly and through its agents and employees, had a duty to exercise due care in the manufacturing, supplying, selling, and/or preparation of said food products, and had a duty to sell them free from contamination and/or foreign substances and fit for human consumption.

34. Notwithstanding these duties, Defendant, directly and through its agents and employees, negligently manufactured, supplied, and sold the contaminated food to Plaintiff, and Defendant negligently allowed said food products to be manufactured, supplied, prepared, and sold contaminated with Hepatitis A, a deadly pathogen.

35. Defendant owed a duty to Plaintiff to manufacture, prepare, and sell supplies and raw materials that complied with federal, state, and local food laws, ordinances, and regulations; that were safe and reliable sources; that were clean, wholesome, and free from adulteration; and that were safe for human consumption and for their intended purposes. Defendant breached this duty.

36. Defendants owed a duty to Plaintiff to use reasonable care in the selection, supervision, and monitoring of its employees and agents. Defendant breached this duty.

37. The Defendant owed a duty to the Plaintiff to use reasonable care in the handling, manufacture, storage, and distribution of its food products, to keep them free of contamination with Hepatitis A. The Defendant breached this duty.

38. Plaintiff's injuries were the direct and proximate result of the negligence of the Defendant in manufacturing, processing, distributing, supplying, preparing, and selling the tainted food products.

39. As a direct and proximate result of Defendant's negligence, Plaintiff was caused to suffer serious injuries; has suffered bodily pain and mental anguish; has suffered, and will suffer in the future, pain of body and mind; has incurred, and will continue to incur, substantial medical and related expenses; has incurred, and will continue to incur, wage losses; and has suffered, and will suffer in the future, these damages.

COUNT TWO

(Implied Warranty of Fitness and Wholesomeness)

40. The allegations in Paragraphs 1 through 39 are incorporated by reference as if fully set forth herein.

41. Under Virginia Code § 8.2-315, where a seller at the time of contracting has reason to know that the buyer is relying on the seller's skill or judgment to furnish suitable goods for any particular purpose for which the goods are required, there is an implied warranty that the foods shall be fit for such purpose.

42. At the time of sale, a merchant of food for human consumption also impliedly warrants that the food is wholesome.

43. Defendant was at all relevant times a merchant and seller of food products, including the gravy biscuit products Plaintiff purchased.

44. The food products that Defendant manufactured, designed, prepared, distributed, supplied, sold, and introduced into the stream of commerce was not wholesome or fit for Plaintiff's consumption because it was contaminated by Hepatitis A.

45. In selling, distributing, and supplying the contaminated food products, Defendant breached the implied warranties as described above.

46. As a direct and proximate result of its breaches of the implied warranties of fitness and wholesomeness, Defendant caused Plaintiff to suffer serious injuries, as described above.

COUNT THREE

(Implied Warranty of Merchantability)

47. The allegations in Paragraphs 1 through 46 are incorporated by reference as if fully set forth herein.

48. Under Virginia Code § 8.2-314, a merchant that sells goods impliedly warrants that the goods are merchantable, *i.e.*, that the goods will pass without objection in the trade under the contract description; that the goods are fit for the ordinary purposes for which such goods are used; and that the goods are adequately contained, packaged, and labeled as the agreement requires.

49. The food products that Defendant manufactured, prepared, distributed, supplied, and sold was objectionable because it contained Hepatitis A.

50. In manufacturing, preparing, distributing, supplying, and selling the contaminated food products, Defendant breached the implied warranty of merchantability.

51. As a direct and proximate result of its breaches of the implied warranty of merchantability, Defendant caused Plaintiff to suffer serious injuries, as described above.

COUNT FOUR

(Negligence *Per Se* –Violations of Sections 3.2-5122 and 3.2-5126 of the Code of Virginia)

52. The allegations in Paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.

53. At all relevant times, the food products that Defendant manufactured, distributed, processed, prepared, supplied, and sold was adulterated with Hepatitis A and was poisonous to Plaintiff.

54. Pursuant to Section 3.2-5122 of the Code of Virginia, food is adulterated if, *inter alia*:

i) It bears or contains any poisonous or deleterious substance that may render it injurious to health; and/or

ii) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; and/or

iii) It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.

55. The food products purchased by Plaintiff at the Restaurant and consumed by Plaintiff was adulterated, as it contained deleterious substances; consisted in whole or in part of a diseased, contaminated, filthy, and putrid substance, and was otherwise unfit for food; and was produced, prepared, packed, or held under unsanitary conditions whereby they became contaminated with filth or whereby they have been rendered diseased, unwholesome, or injurious to health.

56. Code of Virginia § 3.2-5126 prohibits the manufacture, sale, delivery, and holding or offering for sale of adulterated food; the adulteration of any food; the receipt in commerce of any

food that is adulterated; the delivery or proffered delivery thereof for pay or otherwise; the dissemination of any false advertisement in connection with food; and the giving of a false guaranty or undertaking concerning a food.

57. Defendant manufactured, prepared, processed, distributed, supplied, held or offered for sale, and sold food products that were adulterated; adulterated the food products; and/or received in commerce food products that were adulterated and delivered or proffered delivery thereof for pay or otherwise.

58. The actions of Defendant were in violation of Sections 3.2-5122 and 3.2-5126 of the Code of Virginia.

59. Defendant's aforesaid violations of these sections of the Code of Virginia constitute negligence *per se*.

60. Sections 3.2-5122 and 3.2-5126 were enacted for the safety and benefit of both the public in general, as well as patrons of restaurants in the Commonwealth of Virginia, both classes of which Plaintiff was and is a member.

61. Defendant is required pursuant to Sections 3.2-5122 and 3.2-5126 of the Code of Virginia to ensure the manufacture and/or preparation of unadulterated food products and to distribute and sell food products free from contamination and/or disease and fit for human consumption.

62. Notwithstanding these laws, Defendant, directly and through their agents or employees, negligently sourced, processed, distributed, supplied, manufactured, held or offered for sale, and sold adulterated food products that were purchased by Plaintiff, and they allowed said food products to be distributed and sold to Plaintiff in their contaminated state in violation of Sections 3.2-5122 and 3.2-5126 of the Code of Virginia.

63. As a direct and proximate result of Defendant's statutory violations, Plaintiff consumed contaminated food products and was caused to suffer extreme injuries, as described above.

COUNT FIVE
(Virginia Consumer Protection Act)

64. The allegations in Paragraphs 1 through 63 are incorporated by reference as if fully set forth herein.

65. At all relevant times, Defendant was a supplier of goods under the Virginia Consumer Protection Act, as set forth in Virginia Code § 59.1-196, *et seq*.

66. At all relevant times, Defendant was engaged in a consumer transaction with Plaintiff.

67. The Virginia Consumer Protection Act prohibits a supplier that is engaged in a consumer transaction from misrepresenting that its goods and services have certain characteristics, ingredients, uses, or benefits; from mispresenting that its goods and services are of a particular standard or quality; and from using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

68. Defendant's actions as described herein were prohibited practices under Virginia Code § 59.1-200 and violated the Virginia Consumer Protection Act given that Defendant misrepresented that its goods and services had certain characteristics, ingredients, uses, or benefits—namely that they were safe for human consumption—when they did not; mispresented that its goods and services were of a particular standard or quality—namely that they were safe for human consumption—when they were not; and used other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

69. Virginia Code § 59.1-204 permits consumers who are injured by a defendant's violation

of the Virginia Consumer Protection Act to recover actual damages, including treble damages if the Defendant's violation was willful, as well as attorneys' fees and court costs.

70. As a direct and proximate result of Defendant's violations of the Virginia Consumer Protection Act, Plaintiff was caused to suffer serious injuries, as described above.

WHEREFORE, Plaintiff Mindy Sue Perdue demands judgment against Defendant Famous Anthony's, Inc. for compensatory damages in the amount of Five Hundred Thousand $500,000 plus pre-judgment interest from the date of injury and costs.

TRIAL BY JURY IS DEMANDED.

MINDY SUE PERDUE
By Counsel

Respectfully submitted:

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